

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE  
NO. 02-466, JUDGE JOHN RENKE, III

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SC03-1846

**RESPONSE TO THE FLORIDA JUDICIAL QUALIFICATIONS  
COMMISSION'S MOTION FOR LEAVE TO FILE  
NOTICE OF AMENDED FORMAL CHARGES**

**COMES NOW**, the Honorable John Renke, III, by and through his undersigned counsel, and requests the Hearing Panel to deny Special Counsel's Motion for Leave to Amend the Formal Charges based upon the intentional disclosures of confidential information to the public in violation of Judicial Qualifications Commission Rule 23(a) and Article V, Section 12(4)(a) of the Constitution of the State of Florida. In the alternative, the judge requests the Hearing Panel, pursuant to Judicial Qualifications Commission Rule 16, to refer the Proposed Amended Charges Eight, Nine and Ten to the Investigative Panel in order to afford the judge an opportunity to defend himself before the Investigative Panel at a Judicial Qualifications Commission Rule 6(b) hearing. In support, the judge sets forth the following facts and argument:

**I. FACTS**

1. On April 11, 2003, the judge appeared before the Investigative

Hearing Panel for a Rule 6(b) probable cause hearing. The judge was represented at this proceeding by his father, John Renke, II, Esquire. For the seven years prior to being elected to the circuit court bench, the judge had worked at his father's law firm. The Investigative Panel questioned the judge about his compensation from the law firm and his utilization of these funds for his campaign.

2. On October 22, 2003, the Investigative Panel filed the Notice of Formal Charges setting forth the allegations which the Panel had determined were supported by probable cause pursuant to Rule 6(f). The Formal Charges did not charge any campaign contribution violations.

3. On April 7, 2004, the judge and the Investigative Panel entered into a Stipulation which set forth a full and complete recitation of the alleged judicial misconduct being considered by the Judicial Qualifications Commission. The Stipulation did not include any campaign contribution or funding allegations. This Stipulation was rejected by the Florida Supreme Court on July 8, 2004 and "returned for further proceedings on the merits of the issues of misconduct as well as the appropriate discipline."

4. Shortly after the Court rejected the Stipulation, Special Counsel expressed renewed interest in campaign contribution issues. Counsel for the judge explained that the source of the judge's contribution to his campaign was his

income from his father's law firm. Specific cases were identified for Special Counsel on which the judge performed substantial work. These cases generated significant fees to the firm.

5. Based in part on Special Counsel's interest in the campaign finances and the Judge's informal response, the depositions of the judge and his father were scheduled in January 2005. Although not part of the formal charges, counsel for the judge agreed to allow Special Counsel to ask questions related to the campaign financing and the source of campaign funds at the judge's deposition held on January 22, 2005. The judge's father was set for deposition on January 29, 2005. The judge was not requested to bring any files on which the judge had completed substantial work. Moreover, Special Counsel did not subpoena and had not otherwise requested or reviewed any of the firm files on which the judge had worked.

6. The judge did not review any files prior to deposition since his father was going to be deposed the week following his deposition and Special Counsel would thereupon obtain additional details concerning the source of his compensation. However, his father's deposition was rescheduled for March 1, 2005 by mutual agreement of counsel.

7. On February 15, 2005, prior to deposing the judge's father, Special

Counsel advised counsel for the judge of its intention to file amended charges involving allegations not contained in the original formal charges. In response to this notice, counsel for the judge wrote Special Counsel and requested that the new matters “be referred to the Investigative Panel.” The judge’s counsel indicated that he would not waive Judge Renke’s substantive rights.

8. In response, Special Counsel wrote the judge’s counsel and stated that “there is no need or justification for a second Rule 6(b) proceeding or other appearance before the Investigative Panel.”

9. Thus, in the face of objection from the judge’s counsel, Special Counsel served its Motion for Leave to File Notice of Amended Formal Charges on February 16, 2005 reciting the content of the proposed Amended Formal Charges. Special Counsel also served a Notice of Amended Formal Charges on the judge’s counsel on February 16, 2005. Proposed Amended Charge Eight alleges that the judge had directed the distribution of Republican Party flyers endorsing his candidacy. Proposed Amended Charge Nine contends that the judge had not “legitimately earned” compensation from his law firm that was used to fund his campaign. Proposed Amended Charge Ten is based on the original Charges One through Seven and now suggests that those charges, which were the subject matter of the prior Stipulation, constitute an intentional pattern of

misrepresentations.

10. According to the Motion for Leave to File Notice of Amended Formal Charges, the Investigative Panel has already approved the Notice of Amended Formal Charges. However, the judge was not provided a Notice of Investigation nor was he provided the opportunity to appear before the Investigative Panel to make a statement refuting the allegations.

11. Both the Motion for Leave to File Notice of Amended Formal Charges and the Notice of Amended Formal Charges were filed with the Florida Supreme Court and posted on the Clerk's office website. The public postings of both of these documents generated press inquiries into the campaign contribution allegations. Several newspapers published stories discussing the content of the Notice of Amended Formal Charges, focusing on the campaign finance allegations.

12. On February 23, 2005, the Judicial Qualifications Investigative Panel entered an Order to Show Cause requiring the judge to demonstrate why he should not be suspended without pay based on the Notice of Amended Formal Charges. The Investigative Panel issued the Order to Show Cause before the Hearing Panel had granted the Motion for Leave to File the Notice of Amended Formal Charges and before the expiration of the judge's time to file a response.

13. The Order to Show Cause was also filed with the Florida Supreme

Court and posted on the Clerk's office website. On February 24, 2005, the judge's counsel learned about the Order to Show Cause from newspaper reporters who had been monitoring the postings on the Florida Supreme Court website. Several newspapers posted stories pertaining to the Order to Show Cause, including one editorial calling for the judge's immediate resignation.

## **II. ARGUMENT**

### **A. Disclosure of Confidential Information in Violation of Rule 23 and Article V, Section 12 Warrants Denial of the Motion for Leave to Amend the Formal Charges.**

Disclosing the content of the new charges through the Motion for Leave to Amend and the filing of the Amended Notice of Formal Charges was an impermissible dissemination of confidential material and a violation of Rule 23 and Article V, Section 12(4)(a) of the Florida Constitution. Rule 23(a) and Article V, Section 12(4)(a) provide that judicial misconduct charges and further proceedings on those charges are public only after a probable cause finding and the filing of the Notice of Formal Charges with the Clerk of the Supreme Court of Florida.

In this case, Special Counsel and the Investigative Panel did not follow Rule 6(b) when it found probable cause on the new charges without providing the judge notice or an opportunity to refute the charges before the Investigative Panel. In

addition, Special Counsel and the Investigative Panel violated Rule 16 when it filed the Notice of Amended Formal Charges without permission from the Hearing Panel. The content of the new allegations should have remained confidential until there had been a proper probable cause finding and the Hearing Panel had decided whether to grant Special Counsel's Motion for Leave to Amend.

1. The Investigative Panel's probable cause finding or "approval" of the Notice of Amended Formal Charges was deficient because it did not comport with Rule 6(b).

Special Counsel indicates in its Motion for Leave to Amend that the Investigative Panel has "considered and approved" the Notice of Amended Formal Charges. (See Motion, para. 10). However, the Investigative Panel's consideration and approval of the Amended Formal Charges did not comply with the probable cause procedure set forth in Rule 6. Most notably, Rule 6(b) states that before the Investigative Panel determines probable cause, the Investigative Panel is required to notify the judge of the "general matter of the investigation" and is required to afford the judge the "reasonable opportunity to make a statement before the Investigative Panel, personally or by the judge's attorney(s), verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct[.]" As such, Rule 6(b) recognizes the necessity of providing notice of the alleged misconduct so that a judge may prepare a meaningful statement

responding to the Commission's scope of inquiry. Approving the Notice of Amended Formal Charges without consideration of the judge's statement deprives the judge of his procedural due process right to be heard in a meaningful manner. See Mathews v. Eldridge, 424 U.S. 319, 333 (1975)(quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)( recognizing that a "fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"); See also Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth., 795 So. 2d 940, 948 (Fla. 2001)(holding that "procedural due process requires both fair notice and a real opportunity to be heard."). The Investigative Panel should afford the judge the opportunity to fairly explain and refute their suspicions.

Special Counsel contends in correspondence that there is no need for a second Rule 6(b) hearing because the issues were considered at the first Rule 6(b) hearing. However, the judge's statement at the initial April 11, 2003 Rule 6(b) hearing did not respond to the allegations contained in Proposed Formal Charge Nine (campaign contributions) because the Investigative Panel's suspicions did not arise until well after the April 2003 hearing. Although the March 12, 2003 Notice of Investigation referred to the funding of the judge's campaign, the April 2003 Rule 6(b) panel asked few questions on this issue and did not find probable cause



as to campaign financing.

Further, the recency of the accusations shows that these matters could not have been considered during the April 2003 Rule 6(b) hearing. For example, Proposed Amended Charges Eight, Nine and Ten were not included in the April 2004 Stipulation which set forth a full and complete recitation of the alleged judicial misconduct being considered by the Judicial Qualifications Commission. Moreover, Special Counsel acknowledges that “additional investigation and discovery” were required to develop the Proposed Amended Formal Charges. (See Motion, para. 5). Based on all of the circumstances, it is clear that the judge could not have reasonably responded to the Investigative Panel’s recent and additional suspicions at the April 2003 probable cause hearing because the Investigative Panel’s concerns did not even exist at that time.

The Investigative Panel did not notify the judge of the vote to determine whether there was probable cause to support additional violations. The judge was not afforded the opportunity to appear before the Investigative Panel to refute these additional violations before the Panel voted to find probable cause. Consequently, any probable cause determination is deficient since it was rendered before hearing the judge’s statement in defense.

2. The filings of the Notice of Amended Formal Charges and the Order to Show Cause premised on the amended charges were premature because the Hearing Panel had not ruled on the Motion for Leave to Amend.

Special Counsel recognized that it had to seek permission to amend its charging document. (See Motion for Leave to Amend, p. 1, citing Fla. R. Civ. P. 1.190 (requiring the tribunal's permission to amend a civil complaint after twenty days)). In addition to the Rules of Civil Procedure, Rule 16 requires the Hearing Panel to determine whether the amended charges should be accepted and whether to return the allegations to the Investigative Panel for a Rule 6(b) hearing. The Investigative Panel served the Notice of Amended Formal Charges on the same day it filed the Motion for Leave to Amend the Formal Charges. Special Counsel made no effort to ensure that the Motion for Leave to Amend or the Proposed Notice of Amended Formal Charges remained confidential.

Not only did Special Counsel fail to protect the confidentiality of the content of the amended charges, the Investigative Panel took the further step of filing an Order to Show Cause, drawing additional attention to the amended charges that had not even been accepted. The Order to Show Cause was filed while the Motion for Leave to Amend was still pending and the judge's time to file a response had not expired.

Although Rule 23(a) and Section 12(4)(a) state that the proceedings become public after probable cause is found and the Notice of Formal Charges is filed, the Investigative Panel did not have permission to file the Notice of Amended Formal Charges. As such, publication of the Notice of Amended Formal Charges and the Order to Show Cause breached the confidentiality requirements set forth in Rule 23 and Article V, Section 12 of the Constitution of the State of Florida.

3. The disclosure of confidential information has prejudiced the judge and directly violated the Court's previous warnings to promote the confidentiality of the proceedings.

The Florida Supreme Court expects the Judicial Qualifications Commission to protect against unwarranted disclosures. The Court has emphasized this expectation as follows: We agree with respondent that the JQC must provide reasonable safeguards against any breaches of the confidentiality requirements by itself, its staff, and its counsel. . . . Moreover, as we earlier noted, the confidentiality requirements *promote the effectiveness of the judicial disciplinary process and protect judicial officers from unsubstantiated charges*. 696 So. 2d at 752 (emphasis added). We request that the Commission be ever mindful of the implementation of those rules relating to confidentiality which give to all involved in the Commission's proceedings confidence that confidentiality will be observed.

In re Frank, 753 So. 2d 1228, 1241 (Fla. 2000)(quoting, In re Graziano, 696 So. 2d 744, 752 (Fla. 1997).

Special Counsel and the Investigative Panel intentionally disseminated new

allegations of judicial misconduct to the public before conducting a probable cause vote in conformance with Rule 6 and before the Hearing Panel granted the Motion for Leave to file Notice of Amended Formal Charges. Worse yet, Special Counsel made the amended charges public knowing that the judge's counsel objected to the procedure as being contrary to the Judicial Qualifications Commission's rules.

In addition to publishing the content of the new charges without authority, the Investigative Panel has also publicly filed an Order to Show Cause seeking the judge's suspension based on the new campaign financing issue. As a result, Special Counsel and the Investigative Panel have subjected the judge to extensive unwarranted publicity concerning allegations which should have been confidential until the judge had a fair opportunity to defend himself. The disclosures demonstrate a blatant disregard for the Florida Judicial Qualifications Commission's rules intended to safeguard against damaging a judge's reputation with accusations that have not been tested during a probable cause hearing or otherwise accepted by an impartial Hearing Panel.

While the Investigative Panel did not find probable cause pursuant to a Rule 6(b) hearing on Proposed Amended Charges Eight, Nine and Ten, the disclosures pertaining to Proposed Amended Charge Nine are particularly egregious since campaign finance issues are not related to the original charges. The Investigative

Panel should have considered the significant ramifications arising from the publication of the new charges without a proper probable cause finding or permission from the Hearing Panel. For example, on February 19, 2005 the *Tampa Tribune* reported a story titled, “Circuit Judge Accused of Improper Fundraising” and the *Pasco Times* published an article titled, “Judge Faces New Election Law Charges.” The Order to Show Cause generated an additional flurry of articles, again reporting on the seriousness of the new allegations. For instance, on February 25, 2005, the *Tampa Tribune* published an article titled, “Judge is Facing Suspension Over Ongoing Inquiry” and the *St. Petersburg Times* published the story, “Judge must defend himself on April 8.” On February 28, 2005, an editorial in the *St. Petersburg Times* called for the judge’s immediate removal although the new charges had not even been accepted by the Hearing Panel.

Regardless of the outcome of the final hearing, the judge’s reputation is irreparably harmed by these new charges and any re-election opportunities are significantly diminished. The Investigative Panel’s failure to comply with the Court’s repeated requests to promote confidentiality in the future justifies the denial of the Motion for Leave to Amend.

B. As an Alternative to Denying the Motion for Leave to Amend, the Judge Requests Referral to the Investigative Panel with the Opportunity to Make a Statement in his Defense.

The recency of the Commission's investigation into these charges shows that the Proposed Amended Charges are "new matters," separate and distinct from the issues considered at the April 2003 Rule 6(b) hearing. Rule 16 permits the Hearing Panel to "refer to the Investigative Panel any new matter presented or alleged in such amendment, as to which there has been no previous finding of probable cause by the Investigative Panel." As referenced above, on February 15, 2005, the judge's counsel requested Special Counsel to permit the judge to appear before the Investigative Panel at a Rule 6(b) hearing to refute the charges. Although Special Counsel ignored this request, a referral of the Proposed Amended Formal Charges to the Investigative Panel would give the judge a chance to refute the allegations in a confidential proceeding. See Fla. Jud. Qual. Comm'n R. 23(a). Circumventing the confidential probable cause hearing and requiring the judge to defend the new matters for the first time on the public record before the Hearing Panel subjects him to additional negative publicity on unsubstantiated charges.

If given an opportunity, the judge will be able to clearly and convincingly demonstrate that there is no probable cause to support the Proposed Formal Charges. In Proposed Formal Charge Nine, the JQC has alleged that the judge did

not “legitimately earn” the compensation he received. Assuming that it is even appropriate for the JQC to question whether an individual deserves the compensation he or she receives in private employment, the Investigative Panel has overlooked the judge’s work history and the compensation structure at his former law firm. The judge had agreed to a very small base salary with the expectation that he would eventually receive a portion of any attorney fee award or of any settlement on the cases on which he worked. Since many of the cases on which he worked were in litigation, the matters often continued for many years without any attorney fee award. This resulted in the judge receiving very minimal compensation for numerous years.

In 2001, several cases settled or approached settlement and the judge recognized that he would receive the bulk of his compensation for the work he had performed over the preceding years. The judge and his wife discussed how they would spend the earnings. The couple decided to use the money to campaign for judge. The judge reported his contributions as required by the election laws. The funds were properly designated as “loans” from himself. The “loan” terminology is commonly used to describe contributions from the candidate so that the candidate could recover any surplus of funds remaining after the election.

Any assertion that the judge did not work on the law firm files is entirely

without merit. While he was not lead counsel and did not sign pleadings, he performed substantial tasks, such as drafting appellate briefs on interlocutory issues, drafting summary judgment motions, directing the discovery and reviewing, organizing and analyzing discovery materials received in the cases. It is a common and accepted legal business practice for subordinate lawyers to do all of the background work and legal writing while law partners and lead counsel act as attorney of record and sign work product. Although the more senior attorney gets credit for the work product, the efforts of the subordinate lawyers are critical and necessary to the successful representation of the clients. The judge's efforts in this regard should not be underestimated. There is no evidence that the judge did not deserve the compensation that was fairly paid to him.

It may be clear that the Investigative Panel has prejudged the new matters and will find probable cause regardless of any statement by the judge refuting the new allegations. Perhaps the Investigative Panel filed the Notice of Amended Formal Charges solely as a reaction to the Court's rejection of the Stipulation, believing it had to file additional charges to justify suspension or removal. Nonetheless, the judge has no choice but to cling to the expectation that his basic procedural due process rights will be protected and that the Investigative Panel will afford him the opportunity to reasonably defend himself before probable cause is



found.

**WHEREFORE** and by reason of the foregoing, the judge respectfully requests the Hearing Panel to deny the Motion for Leave to File the Amended Notice of Formal Charges. In the alternative, the judge requests the Hearing Panel to refer the new matters to the Investigative Panel for consideration of the judge's statement in his defense.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of March, 2005, the original of the foregoing Response to the Florida Judicial Qualifications Commission's Motion for Leave to File Notice of Amended Formal Charges has been furnished by Federal Express overnight delivery to:

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with copies by U. S. Mail to:

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